

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

Appellee

v.

ROBERT ETHELLES

Appellant.

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Criminal No. **PJM 17-0151**
(formerly 15-po-6237-TMD)

MEMORANDUM OPINION

Robert S. Etchells, who was issued five citations related to a driving incident on May 23, 2015, pled guilty to two of those citations (Count I: unsafe operation and Count III: Operating Vehicle while Under Influence of Alcohol) with the remaining citations dismissed. *See* 15-po-6237, ECF No. 39. On February 27, 2017, he was sentenced by Magistrate Judge DiGirolamo to five months imprisonment as to Count I and six months imprisonment as to Count III to run consecutively. *Id.* He was also charged a \$20 assessment and \$50 processing fee. *Id.*

On March 9, 2017, Etchells filed a Notice of Appeal (ECF No. 1) from the Final Judgment of the Magistrate Judge to the United States District Court for the District of Maryland.¹ It is that appeal which is before the Court today.

On May 15, 2017, the Government filed a Motion to Dismiss Etchells' Notice of Appeal from [the] Judgment of Magistrate Judge (ECF No. 4), arguing that Etchells' appeal should be dismissed pursuant to Local Rule 302 because he failed to file a supporting memorandum within 30 days of the docketing of his appeal. Etchells has not filed a response in opposition.

¹ On March 6, 2017, Etchells incorrectly filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit. *See* 15-po-6237, ECF No. 41.

Local Rule 302 governs appeals from decisions by magistrate judges. With regard to criminal cases, it states:

Appeals in criminal cases shall be made to the District Court within fourteen (14) days from entry of the decision, order, judgment of conviction, or sentence in accordance with Fed. R. Crim. P. 58(g)(2) and other applicable statutes and rules.

Within thirty (30) days of the docketing of the appeal, the appellant shall file with the Clerk of Court and serve on the appellee a memorandum stating the exact points of law, facts, and authorities on which the appeal is based. The appellee shall file an answering memorandum within thirty (30) days thereafter. The Court may extend these times upon a showing of good cause. **If an appellant fails to file a memorandum within the time provided, the Court may dismiss the appeal.** All appeals shall be decided on the record and the parties' memoranda, unless the Court, in its discretion, orders oral argument.

Local Rule 302(1) (emphasis supplied). Etchells' Notice of Appeal was docketed on March 20, 2017. *See* ECF No.1. Accordingly, he had until April 19, 2017 to file and serve his supporting memorandum. On April 10, 2017—nine days before this deadline—the Clerk of the Court issued a Notice of Local Rule 302 (ECF No. 3), stating:

This is to advise you that a Notice of Appeal was filed by the defendant on March 20, 2017 and docketed on March 21, 2017 in the above-entitled case.

Memoranda filed and served in accordance with Local Rule 302 should be electronically filed, as described in the Criminal Procedures Manual. The Manual is available on the court's website at www.mdd.uscourts.gov.

The Clerk also attached a copy of Local Rule 302 to the Notice. *See* ECF No. 3.

As of today—more than 90 days after the docketing of his appeal—Etchells has still not filed a supporting memorandum. Per Local Rule 302, that means the Court may dismiss the appeal.

In both his underlying criminal case and his appeal to this Court, Etchells has been represented by Jason W. Cleckner, Esquire. According to the standard practice and routine of this Court, because Cleckner is noted on the docket, he received notice of the Clerk's Notice of

Local Rule 302 on April 10, 2017. In any event, any suggestion that Cleckner and Etchells did not receive the Clerk's Notice of Local Rule 302 would not absolve Cleckner or Etchells of the failure to file a supporting memorandum. Defendants (and especially defense counsel) are expected to know and adhere to the local rules and are expected to keep up to date on filings in their cases. Their failure to respond to the Government's Motion to Dismiss either means they did not do so in this case or have chosen to abandon the appeal.

The Government's Motion to Dismiss Etchells' Notice of Appeal from Judgement of United States Magistrate Judge (ECF No. 4) is **GRANTED**.

A separate Order will **ISSUE**.

June 22, 2017

/s/
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE